

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INNOCENT BYSTANDER, WRITE	)	
TREATAGE MUSIC, UNIVERSAL-	)	
POLYGRAM INTERNATIONAL	)	
PUBLISHING, INC., MIGHTY UNDERDOG	)	
MUSIC, SONY/ATV TUNES LLC, EMI	)	
APRIL MUSIC INC., LELLOW	)	
PRODUCTIONS, DESMOBILE, INC., BON	)	C.A. No.
JOVI PUBLISHING AND AGGRESSIVE	)	
MUSIC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
WALTZING MATILDA'S, INC. AND LEE	)	
BUZALEK,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

Plaintiffs, complaining of the Defendants, by Richards, Layton & Finger, their attorney, allege:

1. This is a suit for copyright infringement under Title 17, U.S.C. Jurisdiction of this Court is based upon Title 28, U.S.C., Section 1338(a).
2. Plaintiffs allege five (5) causes of action for copyright infringement based on the Defendants' public performances of copyrighted musical compositions. SCHEDULE A annexed to the Complaint sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendants' act of infringement.

3. Plaintiffs named in Column 2 (all references to columns are to columns in SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are properly joined in this complaint under Rule 20, Fed.R.Civ.P.

4. Defendant Waltzing Matilda's, Inc. is a Delaware corporation which did at the times hereinafter mentioned and still does own, control, manage, operate and maintain a place of business for public entertainment, accommodation, amusement and refreshment known as Matilda's Pub & Barbie, located at 801 S. College Avenue, in Newark, in the State of Delaware.

5. Defendant Lee Buzalek is a resident of this District and, at all times hereinafter mentioned was and still is Director and President of Defendant Waltzing Matilda's, Inc., with primary responsibility for the control, management, operation and maintenance of the affairs of said corporation. The acts hereinafter complained of were done with his active assistance, cooperation, acquiescence and procurement, and he derives financial benefit therefrom.

6. Musical compositions were and are publicly performed at said place of business.

7. The original musical compositions listed in Column 3 were created and written by the persons named in Column 4.

8. Each composition was published on the date stated in Column 5, and since the date of publication has been printed and published in strict conformity with Title 17, U.S.C.

9. The Plaintiffs named in each cause of action, including their predecessors in interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive rights and privileges in and to the copyright of each composition listed in Column 3, and received from the Register of Copyrights a Certificate of Registration, identified as set forth on Column 6.

10. Defendants on the dates specified in Column 7, and upon information and belief, at other times prior and subsequent thereto, infringed the copyright in each composition named

in Column 3 by giving public performances of the compositions on Defendants' premises, for the entertainment and amusement of the patrons attending said premises, and Defendants threaten to continue such infringing performances.

11. The performances of the Plaintiffs' copyrighted musical compositions on the dates specified in Column 7 on Defendants' premises were unauthorized: neither Defendants, nor any of the Defendants' agents, servants or employees, nor any performer was licensed by, or otherwise received permission from any Plaintiff or any agent, servant or employee of any Plaintiff to give such performances.

12. In undertaking the conduct complained of in this action, Defendants knowingly and intentionally violated Plaintiffs' rights. Defendants' knowledge and intent are established by the following facts:

(a) Defendants have not sought or obtained a license agreement from Plaintiffs or the American Society of Composers, Authors and Publishers (ASCAP), a performing rights licensing organization of which all Plaintiffs are members.

(b) Despite numerous letters and other contacts by ASCAP representatives informing the Defendants of their liability under the United States Copyright Law, Defendants have continued to perform copyrighted music without permission during the hours that Defendants' establishment is open to the public for business and presenting musical entertainment.

(c) The many unauthorized performances at Matilda's Pub & Barbie include the performances of the five copyrighted musical compositions upon which this action is based.

13. At the times of the acts of infringement complained of, the Plaintiff named in each cause of action was the owner of the copyright in the composition therein named.

14. The said wrongful acts of the Defendants have caused and are causing great injury to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable injury, for all of which the said Plaintiffs are without any adequate remedy at law.

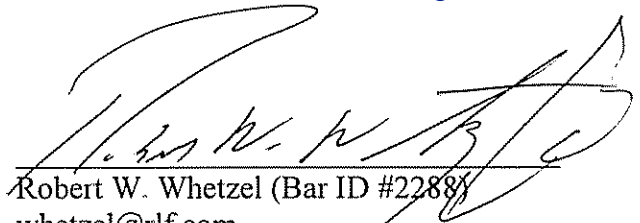
WHEREFORE, Plaintiffs pray:

I. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions or any of them from causing or permitting the said compositions to be publicly performed in Defendants' said premises, or in any place owned, controlled or conducted by Defendants, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

II. That Defendants be decreed to pay such statutory damages as to the Court shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action herein.

III. That Defendants be decreed to pay the costs of this action and that a reasonable attorney's fee be allowed as part of the costs.

IV. For such other and further relief as may be just and equitable.



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Attorneys for Plaintiffs

Dated: 3/24/08

## SCHEDULE "A"

1	2	3	4	5	6	7
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringement
1	Innocent Bystander, Write Treatage Music and Universal-Polygram International Publishing, Inc.	Even Flow	Eddie Vedder, Stone Gossard	8/27/91	PA 544-552	7/30/07
2	Mighty Underdog Music, Sony/ATV Tunes, LLC	Before He Cheats	Josh Kear, Chris Tompkins	11/15/05	PA 1-345-125	7/30/07
3	EMI April Music, Inc. and Lellow Productions	Fallin'	Alicia Angello-Cook (PKA Alicia Keys)	7/10/01	PA 1-065-075	7/30/07
4	EMI April Music, Inc., Desmobile, Inc., Bon Jovi Publishing, Universal-Polygram International Publishing, Inc. and Aggressive Music	Livin' On A Prayer	Desmond Child, Jon Bon Jovi, Richie Sambora	8/11/86	PA 305-252	7/31/07
5	Universal-Polygram International Publishing, Inc.	Toxic	Britney Spears, Pontus Johan Winberg, Christian Karlsson, Cathy Dennis	11/17/03	PA 1-287-636	7/30/07

JS 44 (Rev 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provide by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

**I. (a) PLAINTIFFS - Innocent Bystander; Write Treatage Music; Universal Polygram International Publishing, Inc.; Mighty Underdog Music; Sony/ATV Tunes, LLC; EMI April Music Inc.; Lellow Productions; Desmobile, Inc.; Bon Jovi Publishing; and Aggressive Music**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Robert W. Whetzel  
Todd A. Coomes  
Richards Layton & Finger  
One Rodney Square  
P. O. Box 551,  
Wilmington, DE 19899  
(302) 651-7700

**DEFENDANTS - Waltzing Matilda's Inc. and Lee Buzalek**

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff      • ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant      ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                     | DEF                     |   | PTF                     | DEF                     |
|---|-------------------------|-------------------------|---|-------------------------|-------------------------|
| Citizen of This State                   | <input type="radio"/> 1 | <input type="radio"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="radio"/> 4 | <input type="radio"/> 4 |
| Citizen of Another State                | <input type="radio"/> 2 | <input type="radio"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="radio"/> 5 | <input type="radio"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="radio"/> 3 | <input type="radio"/> 3 | Foreign Nation  | <input type="radio"/> 6 | <input type="radio"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="radio"/> 110 Insurance <input type="radio"/> 120 Marine <input type="radio"/> 130 Miller Act <input type="radio"/> 140 Negotiable Instrument <input type="radio"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="radio"/> 151 Medicare Act <input type="radio"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="radio"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="radio"/> 160 Stockholders' Suits <input type="radio"/> 190 Other Contract <input type="radio"/> 195 Contract Product Liability <input type="radio"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="radio"/> 310 Airplane <input type="radio"/> 315 Airplane Product Liability <input type="radio"/> 320 Assault, Libel & Slander <input type="radio"/> 330 Federal Employers' Liability <input type="radio"/> 340 Marine <input type="radio"/> 345 Marine Product Liability <input type="radio"/> 350 Motor Vehicle <input type="radio"/> 355 Motor Vehicle Product Liability <input type="radio"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="radio"/> 362 Personal Injury - Med. Malpractice <input type="radio"/> 365 Personal Injury - Product Liability <input type="radio"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="radio"/> 370 Other Fraud <input type="radio"/> 371 Truth in Lending <input type="radio"/> 380 Other Personal Property Damage <input type="radio"/> 385 Property Damage Product Liability	<input type="radio"/> 610 Agriculture <input type="radio"/> 620 Other Food & Drug <input type="radio"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="radio"/> 630 Liquor Laws <input type="radio"/> 640 R.R. & Truck <input type="radio"/> 650 Airline Regs. <input type="radio"/> 660 Occupational Safety/Health <input type="radio"/> 690 Other <b>LABOR</b> <input type="radio"/> 710 Fair Labor Standards Act <input type="radio"/> 720 Labor/Mgmt. Relations <input type="radio"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="radio"/> 740 Railway Labor Act <input type="radio"/> 790 Other Labor Litigation <input type="radio"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="radio"/> 462 Naturalization Application <input type="radio"/> 463 Habeas Corpus - Alien Detainee <input type="radio"/> 465 Other Immigration Actions	<input type="radio"/> 422 Appeal 28 USC 158 <input type="radio"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="radio"/> 820 Copyrights <input type="radio"/> 830 Patent <input type="radio"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="radio"/> 861 HIA (1395ff) <input type="radio"/> 862 Black Lung (923) <input type="radio"/> 863 DIWC/DIWW (405(g)) <input type="radio"/> 864 SSID Title XVI <input type="radio"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="radio"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="radio"/> 871 IRS—Third Party 26 USC 7609	<input type="radio"/> 400 State Reapportionment <input type="radio"/> 410 Antitrust <input type="radio"/> 430 Banks and Banking <input type="radio"/> 450 Commerce <input type="radio"/> 460 Deportation <input type="radio"/> 470 Racketeer Influenced and Corrupt Organizations <input type="radio"/> 480 Consumer Credit <input type="radio"/> 490 Cable/Sat. TV <input type="radio"/> 810 Selective Service <input type="radio"/> 850 Securities/Commodities/Exchange <input type="radio"/> 875 Customer Challenge 12 USC 3410 <input type="radio"/> 890 Other Statutory Actions <input type="radio"/> 891 Agricultural Acts <input type="radio"/> 892 Economic Stabilization Act <input type="radio"/> 893 Environmental Matters <input type="radio"/> 894 Energy Allocation Act <input type="radio"/> 895 Freedom of Information Act <input type="radio"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="radio"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

- (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding      ☐ 2 Removed from State Court      ☐ 3 Remanded from Appellate Court      ☐ 4 Reinstated or Reopened      ☐ 5 Transferred from district (specify)      ☐ 6 Multidistrict Litigation      ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**VI. CAUSE OF ACTION: Suit for copyright infringement based upon Defendants' public performances of copyrighted musical compositions.****VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND: Statutory damages and injunction      CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE 3-24-08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY  
RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U. S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**I. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**II. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**V. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**VI. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings (1) Cases which originate in the United States district courts.

Removed from State Court (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment (7) Check this box for an appeal from a magistrate judge's decision.

**III. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**IV. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**V. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.